

# Notice of Allowability

Application No.

10/783,430

Examiner

Paul B. Prebilic

Applicant(s)

LO ET AL.

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1. ☒ This communication is responsive to the communication filed December 22, 2006.
2. ☒ The allowed claim(s) is/are 1-13.
3. ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a) ☐ All b) ☐ Some\* c) ☐ None of the:
    1. ☐ Certified copies of the priority documents have been received.
    2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
    3. ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

\* Certified copies not received: \_\_\_\_\_.

Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application.

**THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.**

4. ☐ A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
5. ☐ CORRECTED DRAWINGS ( as "replacement sheets") must be submitted.
  - (a) ☐ including changes required by the Notice of Draftsperson's Patent Drawing Review ( PTO-948) attached
    - 1) ☐ hereto or 2) ☐ to Paper No./Mail Date \_\_\_\_\_.
  - (b) ☐ including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No./Mail Date \_\_\_\_\_.Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the header according to 37 CFR 1.121(d).
6. ☐ DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

## Attachment(s)

1. ☒ Notice of References Cited (PTO-892)
2. ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3. ☒ Information Disclosure Statements (PTO/SB/08),  
Paper No./Mail Date 02/23/2004
4. ☐ Examiner's Comment Regarding Requirement for Deposit  
of Biological Material
5. ☐ Notice of Informal Patent Application
6. ☐ Interview Summary (PTO-413),  
Paper No./Mail Date \_\_\_\_\_
7. ☒ Examiner's Amendment/Comment
8. ☐ Examiner's Statement of Reasons for Allowance
9. ☐ Other \_\_\_\_\_

### **EXAMINER'S AMENDMENT**

An examiner's amendment to the record appears below. Should the changes and/or additions be unacceptable to applicant, an amendment may be filed as provided by 37 CFR 1.312. To ensure consideration of such an amendment, it **MUST** be submitted no later than the payment of the issue fee.

The claim set filed December 22, 2006 was not fully compliant with 37 CFR 1121 in that it did not indicate the status of cancelled claims 14-22. Therefore, it was not entered and was replaced with the following claim set. The following claim set is identical to the claim set filed December 22, 2006 except that the status of claims 14 to 22 has been indicated. In addition, a minor grammatical error was corrected in claim 1 changing "diametrical" to ---diametrically---. The application has been amended as follows:

This listing of claims will replace all prior versions, and listings,

1. (Currently Amended) A spinal gauge block and tool assembly for determining the distance between two adjacent walls on two adjacent vertebrae for the implant of a disc, comprising:

a spinal gauge block having a tapered configuration formed by a top surface and a bottom surface for respectively contacting the two adjacent walls and with said top surface and said bottom surface respectively extending along two planes which are spaced apart and angled with respect to each other to thereby be non-parallel planes,

said gauge block having a side surface intermediate said top and bottom surfaces with a first dimension and a second dimension respectively directly between said top and bottom surfaces and with said first dimension being greater than said second dimension and with said dimensions being located in diametrically opposed positions on said gauge block and thereby be located in conformance with the tapered configuration,

indicia on said gauge block marking the location of said greater dimension, wherein said indicia is a line extending between the locations of said first dimension and said second dimension,

said side surface having two holes extending therethrough and into said gauge block and with said holes having respective central axes with one of said axes aligned with said indicia and the other of said axes being axially angulated relative to said indicia, and

a tool having an elongated axis and connectable to said gauge block through a selected one of said holes to thereby provide for two different angulated approaches to the two adjacent vertebrae and relative to said tool elongated axis.

2. (Currently Amended) The spinal gauge block and tool assembly as claimed in claim 1, wherein:

said ~~indicia~~ is a line extending between the locations of said first dimension and said second dimension comprises an arrow head.

3. (Original) The spinal gauge block and tool assembly as claimed in claim 1, wherein:

said holes are threaded holes for alternate screw-reception of said tool.

4. (Original) The spinal gauge block and tool assembly as claimed in claim 3, including:

a non-rotation connection between said gauge block and said tool for restraining rotation of said gauge block about said axis of said tool.

5. (Original) The spinal gauge block and tool assembly as claimed in claim 4, wherein:

said non-rotation is a tongue-and-groove connection for self-engagement upon screwing said tool into either selected one of said holes.

6. (Original) The spinal gauge block and tool assembly as claimed in claim 3, including:

said tool having a sleeve portion and a rotatable threaded portion in said sleeve portion for threaded engagement of said gauge block with said tool, and markings along said tool for determining the depth of penetration of said tool into the patient's body.

7. (Currently Amended) A spinal gauge block and tool assembly for determining the distance between two adjacent walls on two adjacent vertebrae in preparation for implanting a spine-supporting disc between the two vertebrae, comprising:

a spinal gauge block having a tapered configuration extending along a plane and having a first side and a second side spaced apart along said plane and with said sides having respective heights and with said height of said first side being greater than said height of second side to thereby present the tapered configuration,

indicia on said gauge block marking the location of said height of said first side, wherein said indicia is a line extending directly between the locations of said heights of said sides,

said first side having two holes with respective central axes and extending into said gauge block and with one of said two holes being axially

aligned with said indicia and the other of said two holes being axially angulated relative to said indicia, and

a tool for positioning said gauge block between the two adjacent walls of the two adjacent vertebrae and said tool having an elongated axis and being connectable to said gauge block through a selected one of said two holes to thereby provide for two different angles of approach of said tool elongated axis toward the two adjacent vertebrae and, with the connection of said tool in either one of said two holes, said second side of said gauge block is presented in a leading position of movement toward the vertebrae relative to the remainder of said block and relative to said first side to thereby be pushed to a position between the two adjacent walls on the two adjacent vertebrae before the movement of said first side therebetween.

8. (Currently Amended) The spinal gauge block and tool assembly as claimed in claim 7, wherein:

said ~~indicia is a~~ line extending directly between the locations of said heights of said sides comprises an arrow head.

9. (Original) The spinal gauge block and tool assembly as claimed in claim 7, wherein:

said holes are threaded for alternate screw-reception of said tool and relatively angled approximately ten degrees.

10. (Original) The spinal gauge block and tool assembly as claimed in claim 9,

including:

a non-rotation connection between said gauge block and said tool for restraining rotation of said gauge block about said axis of said tool.

11. (Original) The spinal gauge block and tool assembly as claimed in claim 10, wherein:

said non-rotation connection is a tongue-and groove connection for self-engagement upon screwing said tool into either selected one of said two holes.

12. (Original) The spinal gauge block and tool assembly as claimed in claim 11, including:

said tool having a sleeve portion and a rotatable threaded portion in said sleeve portion for threaded engagement of said tool with said gauge block.

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13. (Currently Amended) The spinal gauge block and tool assembly as claimed in claim 12, including:

a plurality of said gauge blocks of sizes different from each other for determining the distance between the two adjacent walls and being cylindrical in shape, and

said tool being a single one adapted to individually connect with all of said gauges gauge blocks.

14. - 22. (Cancelled)

In the specification, on page 1, line 1 of the specification was deleted and replaced with the following:

---KIT OF SPINE GAUGE BLOCKS AND A TOOL ASSEMBLY---

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Examiner Paul B. Prebilic whose telephone number is (571) 272-4758. He can normally be reached on 6:30-5:00 M-Th.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Corrine McDermott can be reached on 571-272-4754. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR.



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Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

A handwritten signature in black ink, appearing to read "Paul Prebilic", with a stylized, cursive script.

Paul Prebilic  
Primary Examiner  
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